IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No.93 of 1995

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

HONOURABLE MS.JUSTICE H.N.DEVANI Sd/-

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

COMMISSIONER OF INCOME-TAX - Applicant(s)
Versus
GUAJRAT TEA DEPOT CO. - Respondent(s)

==========

Appearance :
MR TANVISH U BHATT for Applicant(s) : 1,
MR JP SHAH for Respondent(s) : 1,
MR MANISH J SHAH for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
and
HONOURABLE MS.JUSTICE H.N.DEVANI
Date : 19/01/2006
ORAL JUDGMENT
(Per : HONOURABLE MS.JUSTICE H.N.DEVANI)

1. The Income Tax Appellate Tribunal, Ahmedabad Bench 'A', has referred the following three questions under Section 256(1) of the Income-tax

Act, 1961 (the Act) at the instance of Commissioner of Income-tax:

1. “Whether, in law and on facts, the Appellate Tribunal is right in setting aside the order made by the Commissioner of Income-tax (Appeals) restoring the assessment to the IAC (Asstt.) ?”

2. “Whether, there were justifying circumstances for deletion of the addition of Rs.3,78,000/- on account of suppression of sales ?”

3. “Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in consequently deleting the interest charged u/s. 215 and 217(1) of the I.T. Act, 1961 ?“

2. The Assessment Year is 1982-83 and the corresponding accounting period is Samvant Year 2037.

3. Heard Mr.Tanvish U. Bhatt, learned Standing Counsel on behalf of the applicant-revenue, and Mr.J.P.Shah, learned advocate for the respondent-assessee.

4. The assessee, is a Registered Partnership Firm. Search proceedings were taken at the premises of the assessee on 22nd November, 1983 and certain incriminating materials were seized. The Assessing Officer made additions on account of

suppressed sales on the basis that the assessee had received certain cash of small amounts, on the ground that though the sales were accounted for, there was scope for additions on account of suppression of sales.

5. In assessee's appeal, the Commissioner of Income-tax (Appeals) vide order dated 10th September, 1985 set aside the assessment and directed de novo assessment.

6. The assessee carried the matter in appeal before the Tribunal. The Tribunal vide its order dated 28th July, 1987 set aside order of the CIT (Appeals) and allowed the appeal.

7. As can be seen from the order of the Tribunal, the Tribunal has found that on similar grounds the Commissioner of Income-tax (Appeals) had deleted the additions made in relation to Assessment Year 1981-82 on the ground that the seized books were in respect of altogether different years and, therefore, there was no case for any addition. The Tribunal, accordingly, on the basis of the earlier decision of the appellate authority held that there was no case for addition as the situation in the present case was similar to that for Assessment Year 1981-82. The learned counsel for the applicant gracefully accepted the fact that

the aforesaid decision for Assessment Year 1981-82 had attained finality.

8. Considering the aforesaid findings of fact recorded by the Tribunal, it cannot be said that there is any infirmity in the impugned order of the Tribunal. In the circumstances, the questions referred are answered in the affirmative i.e. in favour of the assessee and against the Revenue.

9. The reference stands disposed of accordingly, with no order as to costs.

Sd/-
[D.A. MEHTA, J]

Sd/-
[H.N. DEVANI, J]

***

*Bhavesh**